IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1541

MARTIN DARVIN, Petitioner

v.

COUNTY OF ORANGE, STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA, Respondents

---

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO, OF THE STATE OF CALIFORNIA

MARTIN DARVIN, Pro Se
2473 Middlesex Place
Fullerton, CA 92635

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No.

MARTIN DARVIN, Petitioner

v.

COUNTY OF ORANGE, STATE PERSONNEL BOARD OF THE STATE OF CALIFORNIA, Respondents

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL, FOURTH APPELLATE DISTRICT, DIVISION TWO, OF THE STATE OF CALIFORNIA

The Petitioner Martin Darvin respectfully prays that a writ of certiorari issue to review the judgment and opinion of the Court of Appeal, Fourth Appellate Distric, Division Two, of the State of California entered in this proceeding on December 14, 1976.

OPINION BELOW

The opinion of the Court of Appeal is not reported and appears herein as Appendix B.

JURISDICTION

The opinion of the Court of Appeal was entered December 14, 1976. The Petition for Rehearing was denied January 11, 1977. The Supreme Court of the State of California denied hearing February 11, 1977. Jurisdiction of this Court is invoked under 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

1. Whether the United States Constitution, in the light of Bishop v. Wood, ___U.S.___, 48 L. Ed. 2d 684, requires federal judicial review of violations of the due process clauses of the Fifth and Fourteenth Amendments in the wrongful discharge of permanent public employees at the local level, where it is alleged that their discharge stemmed from their refusal to violate the federal statutory provisions which govern their job classifications.

2. Whether Barber v. State Personnel Board, 18 Cal. 3d 395, emasculates the Fifth and Fourteenth Amendment rights of permanent public employees against wrongful discharge as set forth Arnett v. Kennedy, 416 U.S. 134, where Barber deems the denial of procedural safeguards against wrongful discharge to be mitigated by the award of back pay for the short period from the date of wrongful discharge to the date of the filing of the State Personnel Board's decision upholding such discharge.

3. Whether California may exercise discretion of selective noncompliance with federal laws which govern state welfare administration, where the hearing officer refused to admit evidence relating to the Talmadge Amendment to the Social Security Act which Petitioner offered in defense against the allegation of insubordination.

4. Whether California's arbitrary application of an unequal substantial evidence test to judicial review of State Personnel Board decisions abridges the Fourteenth Amendment rights of appellants thereof, where concurrently similar appellants of any other California state or local agency decision obtain a more favorable application of the independent judgment test of the evidence adduced at their evidentiary hearings.

5. Whether the ulterior motive for Petitioner's discharge was official dissatisfaction with his exercise of his First Amendment rights in calling official attention to administrative malfeasance of fraudulent expenditure of federal funds allocated for public assistance.

CONSTITUTIONAL AND STATUTORY PROVISIONS

First Amendment

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peacably to assemble, and to petition the Government for a redress of grievances.

Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; or shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Talmadge Amendment to the Social Security Act

Applicable provisions set forth in Appendix C at 12-13.

STATEMENT OF THE CASE

A. From Discharge to Hearing

Petitioner was served with an Order of Suspension and Dismissal from his position as a Social Service Worker II by the Orange County (California) Department of Social Welfare (since renamed Department of Social Services) at the close of business on July 6, 1973, effective immediately. (Pl Ex 2A)

Said order cited no specific instances of violative conduct nor any specific regulation in the California Government Code or elsewhere on which the order was based. An official personnel memorandum accompanied the order which in effect admonished Petitioner to abstain from exercising his constitutional rights in the course of preparing his defense, as follows:

> "As of this date and time you are not to telephone, write, or talk to clients and/or recipients whom you have met or known through your official capacity as a representative of this department.
>
> (s) Russell C. Patton, Personnel Officer
> Department of Social Welfare" (Pl Ex 2B)

On July 19, 1973, Petitioner sent a letter of appeal from punitive action to the State Personnel Board setting out his denial of the vague allegations of the order and asking for a "clear and concise statement of the cause or causes of the dismissal and the acts and omissions on which the causes are based." (Pl Ex 3A) No response forthcoming, Petitioner on August 27, 1973, called respondent county department to task for failure to provide such a clear and concise statement and requested that it be provided immediately. (Pl Ex 3B)

Twice again, on September 6 and 11, 1973, appeals to the respondent state board to compel the county department's compliance with statutory procedures drew no response. (Pl Ex 3C) The board failed to respond to another request of September 18, 1973. (Pl Ex 3D)

On September 25, 1973, the county department produced a new "Statement of Causes for Suspension and Dismissal of Martin Darvin," as equally vague and gravely defective as the

first order of July 6, 1973. Whereupon on October 8, 1973, Petitioner again requested specific information regarding the new set of allegations necessary for adequate defense preparation. (Pl Ex 4B)

The foregoing request drew evasive responses on October 23 and 26, 1973, wherein the county betrayed its strategy of surprise by reserving the right to produce relevant evidence at the forthcoming hearing. (Pl Ex 4C) The county's response of October 26 was accompanied with a "Supplemental Statement of Causes" so vague as to avail Petitioner no inkling of the substance of the charge. (Pl Ex 4D)

B. From Hearing to Appeal

The administrative hearing of November 2, 6, and 7, 1973, and the hearing officer's recommended decision upholding punitive action established the board's complicity in the violation of Petitioner's procedural safeguards against wrongful discharge. The decision pointed to no violation as set forth in the Government Code or other statute or regulation which prescribes specific discipline for specific acts. (Pl Ex 5A)

On December 10, 1973, a Petition for Rehearing was filed contending prejudice and error on the hearing officer's part for admitting stale evidence and upholding the penalty for the few charges which he sustained out of the many which had been made. Also, Petitioner alleged, the hearing officer erred in sustaining discipline inasmuch as there had been no discipline imposed on Petitioner prior to July 6, 1973, when it was clear from the record that the alleged violative acts were presumed to have occurred in January, March, and May of 1973. (Pl Ex 5B)

On January 10, 1974, the State Personnel Board summarily denied the Petition for Rehearing without affording Petitioner the opportunity to present either oral or written argument before it. (Pl Ex 5C)

On July 17, 1974, a Verified Petition for Writ of Mandate was filed in the Superior Court of Orange County, the oral transcript of the administrative hearing not having been received until the previous month. (Pl Ex 6A, 1A) An amended petition was filed on January 30, 1975. (Pl Ex 6B) Petitioner asked the court to set aside the board decision and restore him to his former position.

The hearing on the writ was held on May 7, 1975. The trial court announced its intended decision denying the writ on May 14, 1975. (Pl Ex 7A) Judgment was entered June 11, 1975. (Pl Ex 7B)

Petitioner filed a Notice of Appeal from the Judgment of the Superior Court of Orange County on July 24, 1975. (Pl Ex 7C) After filing his Notice to Prepare Clerk's Transcript on August 13, 1975 (Pl Ex 7D), Petitioner discovered that the court file was devoid of every exhibit item which he had submitted into evidence at the hearing on the writ of May 7, 1975. Some of these exhibits happened to duplicate some of those which the county had submitted into evidence at the administrative hearing but which it had subsequently sought to suppress. (Pl Ex 1A, p. iii)

Whereupon Petitioner filed a Notice of Intention to Move for New Trial and Motion for New Trial on September 10, 1975, on grounds of procedural irregularities and abuse of discretion. (Pl Ex 8A). The primary objective for a new trial was the opportunity to resubmit the evidence in question in order that the court might have the whole record on which to base its judgment. It was necessary, moreover, that the record be complete for purposes of appeal.

The court denied the motion for new trial on grounds of timeliness but received Petitioner's exhibits into evidence without reviewing them to determine their possible effect on the validity of its judgment. (Pl Ex 8E) Yet this was a very considerable bulk of material which bore heavily on either the weight of the evidence or the light of the whole record. Preeminent among the exhibits in question were the Darlene Bruce Case Record (App. D–14-20), Memorandum to Personnel File (Pl Ex 9B), Personnel Evaluation Report (Pl Ex 9C), and Letter of Darrell Dean Harris to Martin Darvin of May 1, 1972 (Pl Ex 9D)

The hearing on appeal was held on June 2, 1976. The opinion below was filed December 14, 1976, affirming suspension and dismissal but reversing effective date of discharge by setting it back to the date which the board filed its decision, basing this action on the fact that Petitioner had been deprived of his procedural safeguards. (App. B–11)

I. STATE AND LOCAL OFFICIALS MUST NOT ESCAPE THEIR OBLIGATION TO ABIDE BY THE FEDERAL CONSTITUTION AND ENFORCE FEDERAL STATUTES WHICH GOVERN THEIR ADMINISTRATIVE DUTIES.

In Bishop v. Wood, ___U.S.___, 48 L. Ed. 2d 684, this Court ruled on the case of a North Carolina local police officer who alleged violation of due process in his discharge. There it was deemed that the appellant's discharge conformed with established procedure in that state and that therefore no violation of due process occurred. Moreover, Bishop v. Wood professed a judicial stance of renouncing review of local issues where violations of due process are alleged.

Petitioner urges for clarification of the question as to whether a public employee charged with administering due process may be deprived of the same constitutional safeguards which he himself must avail others. May local despots with public badges of authority be permitted to ride roughshod over their subordinates — this is the question which begs to be resolved in Bishop. This question becomes so much more urgent when the local despots may be charged with authority of administering federal law which governs their operations and disbursement of federal funds in the process thereof.

Here the due process issue under the Fifth and Fourteenth Amendment is intertwined with the First Amendment issue of free speech which, as this Court held in Bishop, local authorities may not violate by summary action against public employees for the exercise thereof. Violation of due process becomes a weapon for the violation of free speech in the hands of local despots when used to handicap the appellant from defending himself against malicious allegations. So terrible a weapon must be struck from the hands of local despots.

The public trust in duly constituted authority breaks down when that authority may escape retribution for its own illegality. Strongly as a state's statutes may theoretically protect the due process rights of public employees against wrongful discharge, state officials may still violate them with impunity, and the state courts may affirm their violations under cover of the substantial evidence test. NLRB v. Brown, 380 U.S. 278; Napue V. Illinois, 360 U.S. 264.

II. OPINION BELOW CONCEDES THAT PETITIONER HAD BEEN DEPRIVED OF REQUIRED PROCEDURAL SAFEGUARDS BEFORE SUSPENSION AND DISMISSAL, DECLARES ACTION AGAINST HIM WAS INVALID, YET AFFIRMS ACTION ON BASIS OF SUBSTANTIAL EVIDENCE TEST.

In Arnett v. Kennedy, 416 U.S. 134, this Court was faced with a due process challenge to the Lloyd-LaFollette Federal Civil Service Act, 5 U.S.C. § 7501 (a). The employee was found to have been deprived of due process by his discharge because of the constitutional infirmity of the aforesaid statute governing discharge of permanent public employees. The action was reversed and the case remanded for further proceedings.

Arnett spelled out the procedural remedies required to restore constitutional validity to federal civil service discharge actions. The California Supreme Court, faced with a similar due process challenge to California Government Code. § 19574, likewise found that statute governing discharge of state civil service employees also to violate due process. Skelly v. State Personnel Board, 15 Cal. 3d 194. Here the action against the appellant was reversed and the case similarly remanded.

Only six weeks prior to the entry of Skelly, a California Court of Appeal ruled in an identical case that the constitutional infirmity of § 19574 was resolved by deferring the effective date of dismissal to the date of the board's filing of its decision. Kristal v. State Personnel Board, 50 Cal. App. 3d 230, hearing denied.

The Kristal principle of deferring the effective date of dismissal was originated in the trial court's judgment, which was entered prior to publication of Arnett. The appellate opinion followed Arnett. However, the appellate opinion nevertheless insisted that Arnett "should be read as validating the effective date of dismissal adopted by the trial court." Kristal at 232.

Approximately six months after Skelly, another state civil service discharge case wending its way through the courts was decided in which the appellant had pleaded the identical issue of violation of due process and was granted Kristal damages. Barber v. State Personnel Board, 58 Cal. App. 3d 1.8.

The board appealed on the grounds that Kristal damages were excessive for violation of due process but was not sustained. Barber v. State Personnel Board, 18 Cal. 3d 395.

The second issue raised by the board went to the question of prospective or retroactive effect of Skelly—whether Kristal damages must be paid in all pending cases where the allegation of violation of due process was sustained. The board had formulated this issue out of the erroneous contention of the lower Barber court that the Skelly court had upheld the Kristal principle, when in fact Skelly makes no reference to the Kristal principle but conforms in its entirety to Arnett. Skelly at 215. The lower Barber opinion confuses Skelly with the Kristal principle by invoking Skelly at 220, fn. 34 in support of its erroneous contention that "plaintiff's dismissal was constitutionally valid as of the date of the Board's decision." Barber, 57 Cal. App. 3d 1,7.

Aforesaid fn. 34 actually reads: "As petitioner has heretofore been accorded a full evidentiary hearing in this matter, it is unnecessary for the Board to order the Department to reinstitute new proceedings against him in order to impose an appropriate discipline in respect to the conduct involved herein."

The board argued that retroactive effect of damages for violation of due process payable for the short period from discharge to decision would cost the state hundreds of thousands of dollars. Barber v. State Personnel Board, 18 Cal. 3d 395, 401. It would have appeared that mass purges of state employees had been taking place, which employees would be unduly recompensed for the violation of their constitutional rights if Kristal damages had to be paid retroactively in all pending cases.

The California Supreme Court reasoned otherwise, however. Actually, the number of litigants in cases still pending was noted to be very small. Therefore, the cost to the state would be minimal. Barber, 18 Cal. 3d at 402. Wherefore, the substance of the California Supreme Court rationale in the retreat from Arnett and Skelly may be thusly synthesized: constitutionality will be upheld if it does not cost too much.

The board's aptitude for befuddling the facts is indicated in the opinion below, wherein it states: "The board maintains that petitioner may not raise the due process issue on

appeal because he failed to present it in either the administrative hearing or in the trial court." (App. B—10-11, fn. 3) On the contrary, Petitioner had pressed the issue of the county's refusal to comply with his repeated requests for a proper statement of charges in strenuous argument in the administrative hearing. (RT 271 at 21 to 272 at 24) The hearing officer dismissed Petitioner's argument and the county's response by requesting, "May we go on with something else for the remaining thirteen minutes of the morning, Mr. Weeks?" (RT 274 at 7-9) In fact, the hearing officer convened the oral proceedings at the outset with the following capricious finding: "We will take official notice that the procedural requirements bringing us together have been complied with." (RT 1 at 23-25)

Petitioner had raised the due process issue in both the original and amended petitions for writ of mandate. (Pl Ex 6A on 3 at, 10-12, 6B on 2 at 30-33) Again Petitioner raised the due process issue in his Motion for New Trial to the trial court. (Pl Ex 8A on 2 at 1-24, 7 at 23 to 8 at 24)

Following the example of the hearing officer, the trial court refused to take notice of the due process issue. In doing so, the trial court erroneously held that it had applied the independent judgment test, yet adduced the isolationist principles of the substantial evidence test in support thereof. (Pl Ex 7A, 8A on 3 at 5-11)

Here the opinion below is fraught with contradictions of law and fact. It denies its power to reweigh the evidence, which it must do to determine abuse of discretion, which it must be able to find in order to interfere with the imposition of the penalty. (App. B—9) Moreover, it argues strenuously that the county complied with prescribed standards, then refutes itself by its admission that Petitioner was indeed deprived of his procedural safeguards and that therefore the action of July 6, 1973, was indeed invalid. (App. B—8,10)

It is well settled that a public agency has a higher duty of care to comply with its own regulations. It does not have discretion to enforce the law discriminatorily in violation of any person's constitutional rights. A reviewing court must strike down an order based upon the agency's flouting of the law. SEC v. Chenery Corp., 318 U.S. 80.

III PROCEDURAL ERRORS ESTABLISHED BOARD'S COMPLICITY IN COUNTY'S CONSPIRACY TO RESTRAIN PETITIONER FROM CARRYING OUT TERMS OF MANDATORY WORK REQUIREMENT OF TALMADGE AMENDMENT.

Federal courts have the power to review state welfare administrative practices and prohibit the use of federal funds by a state for noncompliance with federal statutory requirements as a consequence of the fact that Congress has granted such power to the U.S. Department of Health, Education, and Welfare. Rosado v. Wyman, 397 U.S. 397.

Foremost among Petitioner's allegations of California's noncompliance with federal statutory requirements was the hearing officer's refusal to admit evidence of the applicable provisions of the Talmadge Amendment to the Social Security Act, 42 U.S.C., § 602, 604 (App. C–12, 13), which Petitioner required for defense against the allegation of insubordination. (Pl Ex 4A)

The hearing officer ruled in this manner repeatedly on the basis of the county's position that administrative authority to issue an order prevails over consideration of the prospect that the order in question violates applicable law. He actually restrained the county from proceeding in its direct examination of Supervisor Lee Miller on legal grounds, aware as he must have been that there was no way the county could possibly justify its action legally in the Darlene Bruce case. (App. D–14-20) Consequently, the county adopted this position. (RT 210 at 24 to 211 at 14, 226 at 19 to 227 at 23, 244 at 6-11, 245 at 5-9, 246 at 5, 14-18, 379 at 17-25)

Petitioner required the Talmadge Amendment as evidence of the fact that only an eligibility worker, not a service worker, was empowered to discontinue aid and that his memorandum to Darlene Bruce's eligibility worker was advisory and not ministerial of the client's refusal to comply with the mandatory work requirement. (App. D–17) Nor is an eligiability worker empowered to discontinue aid without first advising the recipient of his/her right to ask for a fair hearing and then acting only on the adverse decision therefrom. Talmadge Amendment, s 602 (a) (4) (App. D–12) Goldberg v. Kelly, 397 U.S. 254, Wheeler v. Montgomery, 397 U.S. 280.

Following Petitioner's removal as her service worker at her

request, Darlene Bruce was discontinued without a fair hearing upon the recommendation of her subsequent service worker. (Pl Ex 6D on 18 at 22-25) Her malicious, perjurious slander of Petitioner defied credibility in the light of her case record and the contradictions between her and her daughter's testimony as to whether they reported Petitioner's alleged action relating to her daughter to the county department. (RT 109 at 1-24, 125 at 19 to 125-A at 1)

Moreover, the manner in which the county lodged this allegation against Petitioner only one week prior to the administrative hearing without affording him any specific information attending the allegation necessary for defense preparation thereto highlights the board's complicity in the county's defective action. The allegation, which Petitioner heard for the first time in its essential details from the respondent witnesses' testimony, centered on the home call of March 23, 1973. (App. B–3, App. D–16 at No. 14) The date of the Supplemental Statement of Causes containing the allegation was October 26, 1973. (Pl Ex 4D)

Petitioner pressed the Darlene Bruce issue to the trial court in his trial brief in support of his Amended Verified Petition for Writ of Mandate, in which he reproduced the Darlene Bruce case record in full and much of the oral transcript on the relevant allegations. (Pl Ex 6D on 1-19) Also, the Darlene Bruce case record was one of the administrative exhibits which he reoffered into evidence at the hearing on the Motion for New Trial. (Pl Ex 8A) The issue was preserved on further appeal by incorporation of the trial brief by reference. (Pl Ex 11A on 27)

IV CALIFORNIA COURTS PLAY HAVOC WITH ADMINISTRATIVE LAW BY THEIR VACILLATION OVER THE SCOPE OF THE SUBSTANTIAL EVIDENCE TEST, THEREBY VIOLATING DUE PROCESS RIGHTS OF APPELLANTS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS.

In LeVesque v. Workmen's Compensation Appeals Board, 1 Cal. 3d 627, 636, the California Supreme Court had observed that its own lack of consistency in the manner in which it had applied the substantial evidence test in the past had caused considerable confusion among the Courts of Appeal in the

state. The LeVesque court affirmed that the reviewing courts must consider the entire record, that they may not isolate only the evidence which supports the board's findings, and that therefore they may not disregard relevant evidence in the record. LeVesque, at 638, fn. 22. Also see Netterville, The Substantial Evidence Rule in California Administrative Law, 8 Stan. L. Rev. 563, 580-583.

Again, the California Supreme Court held that the general applicability of the rule of substantial evidence in the light of the whole record does not affect the power and duty of the trial court to make an independent determination of questions having legal character. Nor is the reviewing court prevented from determining whether respondent has proceeded in excess of jurisdiction, whether there has been a fair trial, and whether the board's findings of fact are supported by substantial evidence. Trial and appellate courts occupy identical positions with regard to the administrative record, and the function of the appellate court, like that of the trial court, is to determine whether that record is free from legal error. Bekiaris v. Board of Education, 6 Cal. 3d 575, 587.

The rule of substantial evidence in the light of the whole record was still later affirmed by the court in a 1975 case. Skelly v. State Personnel Board, 15 Cal. 3d 194, 217, fn. 31.

But in a 1976 case an appellate court reflected the very confusion to which the LeVesque court had alluded where it was stated: "In following the substantial evidence rule we must consider the evidence in the light most favorable to the Board, giving to the Board the benefit of every reasonable inference and resolving all conflicts in its favor." Barber v. State Personnel Board, 57 Cal. App. 3d 1, 4.

The California Supreme Court in Barber v. State Personnel Board, 18 Cal. 3d 395, failed to disapprove of this isolationist concept of the substantial evidence test and so by its silence indicated its tacit retreat from its prior position that substantial evidence must be viewed in the light of the whole record.

The court below contends that an appellate court may not redetermine the weight of the evidence and that its power begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the judgment. (App. B–9) This is only a

complete reversal of the same court's finding in a prior case, where it had brought the State Personnel Board to account for its flagrant disregard of legal discretion. This the court below defined as "an impartial discretion taking into account all relevant facts, together with legal principles essential to an informed and just decision. Blake v. State Personnel Board, 25 Cal. App. 3d 541, 543.

Since 1936, with Standard Oil Co. v. State Board of Equalization, 6 Cal. 2d 557, the California Supreme Court has struggled with the substantial evidence test over its isolationist application and the injustice accruing therefrom. In Standard Oil the court innovated the independent judgment test in California administrative law but applied it very sparingly until 1974, when it broke down almost all restrictions on its application in Strumsky v. San Diego County Employees Retirement Association, 11 Cal. 3d 28.

The Strumsky court carved a milestone in judicial progress toward equitable justice for appellants from California administrative decisions where fundamental vested rights are at stake. But in the process of doing so, however, it bestowed judicial sanction upon a de facto inferior class of persons whom it deprives of the equal protection of its judicial benefaction.

Strumsky contrived the legal rationale that the independent judgment test should apply to judicial review of all appeals from decisions of all state and local agencies affecting fundamental vested rights — with the single exception of the State Personnel Board. Here Strumsky rationalized that the board is a "constitutional" agency endowed with quasi-judicial powers, for which reason judicial review of its decisions calls for the substantial evidence test in the light of the whole record. All other agencies being of legislative origin, they lack judicial powers, and therefore the courts must review their decisions with independent judgment. Strumsky, at 32, 35-36. See Christie, Strumsky [et cetera]: Determining the Scope of Judicial Review of Administrative Decisions in California, 26 Hastings L.J. (1975) 1465, 1467, 1490, fn. 122, 1497, fn. 166.

The opinion below reflects the confusion of the California courts over the substantial evidence test at its peak. (App. B–6) In the light of the California Supreme Court's own

inconsistency in this regard, the ramifications of this confusion threaten the constitutional rights of all public employees whose classifications fall within the appellant purview of the State Personnel Board.

In order to institute constitutional forms of judicial review in California, in which all appellants alike receive equal protection of the laws as guaranteed by the Fourteenth Amendment, it is necessary to invalidate the substantial evidence test nation-wide because of its widespread application as a disguise for the isolation test. It is necessary, moreover, to overrule all cases which had invoked the isolation test and authorize only the application of the independent judgment test, with the weight of the evidence determining whether facts shall be deemed facts even if they do not support the agency decision.

As the opinion below indicates (App. B–9), Petitioner had amply raised the trial court's error in this regard on appeal, but it was the opinion itself and the failure of the California Supreme Court to repudiate the isolation test (p. 13 supra) which raised the question to the federal level. Napue v. Illinois, 360 U.S. 264, 271.

V PUNITIVE ACTION AGAINST PETITIONER BROUGHT IN REPRISAL FOR REVELATIONS OF ADMINISTRATIVE MALFEASANCE IN VIOLATION OF HIS FIRST AMENDMENT RIGHTS.

Petitioner was a very hard, outstanding worker with a good reputation with people who knew him well. He motivated difficult clients who had resisted the efforts of their previous workers to lead them into employment. (RT 357 at 1-19, 367 at 7-9, 368 at 15-20) In fact, his supervisor, Lee Miller, was particularly laudatory in certain passages of the personnel evaluation report of November, 1972, as follows:

> "Martin, your efforts and energy towards helping your clients attain employment are to be commended. You have reason to be proud of the results attained by your clients because of your assistance with their job search. These results have been consistent throughout the year."
>
> *****

> "You should be aware that I also receive many remarks of a complimentary nature from eligibility workers and supervisors, as well as other service workers, about your work. Specifically, this usually involves a case with questions about an unemployed father's cooperation with the job search requirement. There are many times when eligibility people are glad to see a particular case assigned to you because they feel that you will be able to overcome the many barriers that some clients present when they are confronted by possible employment."

Having so awarded Petitioner his credentials for peerless performance, Supervisor Miller proceeded to castigate him for "this almost total commitment to getting an unemployed father to work . . . You like to think of your position as that of a job placement specialist." Whereupon Supervisor Miller reveals the fact that Petitioner had accomplished his marvelous achievements only because he had functioned outside of department policies. (Pl Ex 9C)

Petitioner responded to this personnel evaluation report with a Memorandum to Personnel File (Pl Ex 9B) wherein he delineated Supervisor Miller's multitudinous malicious innuendoes as characteristic of the department's alleged overall malfeasance. The memorandum also delineated similar innuendoes contained in the Letter of Reprimand to Martin Darvin from Darrell Dean Harris of May 1, 1972. (Pl Ex 9D) Here Petitioner was reprimanded by Supervisor Miller's own administrative supervisor for Petitioner's "generally overzealous approach to achieve your case goal of finding employment for the unemployed fathers in your caseload."

The fact that Petitioner had submitted copies of his memorandum to each of the five members of the Orange County Board of Supervisors, the County Administrative Officer, and the Director of the California Department of Social Welfare (since renamed Department of Benefit Payments) was made the basis of charges six and seven in the Statement of Causes of September 25, 1972. (Pl Ex 4A)

The opinion below dwells upon the county's allegation that Petitioner made "derogatory remarks" about other personnel. (App. B–7-8) There is no mention of the essence

of the "derogatory remarks" and the particular Government Code section or other regulation which was allegedly violated by such remarks.

Essentially, these "derogatory remarks" were summed up in the Memorandum to Personnel File throughout. They pointed to the widespread lackadaisical attitude of staff to duty and lack of concern for scrupulous regard for financial accountability in the disbursement of public funds on the part of the department administration. That the department was indeed provoked by Petitioner's revelations of administrative fraud was disclosed in the testimony of the county witness, Division Director Dorothy L. Hufford, wherein she denied Petitioner's right to call official attention to another worker's malfeasance. Her own culpability was borne out by her inability to remember whether she had instructed an eligibility worker to issue a $100 check to an ineligible applicant. (RT 340 at 16, 346 at 12)

It is incontrovertible that the county's motive in lodging its spurious allegations against Petitioner arose out of official dissatisfaction with his exercise of his constitutional rights of freedom of speech and to petition for redress of grievances guaranteed by the First Amendment, where by such exercise Petitioner called official attention to the department's administrative malfeasance and violation of the federal statutory regulations governing its administration. The face of the record itself establishes federal jurisdiction of this issue. Vachon v. New Hampshire, 414 U.S. 478; Perry v. Sinderman, 408 U.S. 593.

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeal, Fourth Appellate District, Division Two, of the State of California.

Respectfully submitted,

MARTIN DARVIN, Pro Se
2473 Middlesex Place
Fullerton, CA. 92635

APPENDIX A

DENIAL OF PETITION FOR REHEARING

COURT OF APPEAL – STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION TWO

(Filed January 11, 1977)

MARTIN DARVIN
Appellant
vs.
COUNTY OF ORANGE, et al
Respondents

4 Civ. NO. 15514
COUNTY NO. 216614

BY THE COURT:

The petition for rehearing is DENIED.

Gardner, P.J.

DENIAL OF APPEAL BY THE SUPREME COURT, STATE OF CALIFORNIA

CLERK'S OFFICE, SUPREME COURT
4250 STATE BUILDING
San Francisco, California 94102

FEB 11 1977

HEARING DENIED

In re: 4 Civ. No. 15514

Darvin vs. County of Orange

Respectfully,

G.E. BISHEL
Clerk

APPENDIX B

OPINION BELOW

(Caption Omitted)

APPEAL from a judgment of the Superior Court of Orange County. Kenneth E. Lae, Judge. Judgment affirmed in part and reversed in part.

Martin Darvin, In Propria Persona, Petitioner and Appellant.

Evelle J. Younger, Attorney General, Melvin R. Segal, Deputy Attorney General, Adrian Kuyper, County Counsel and James E. Fluornoy, Deputy County Counsel for Respondent.

Petitioner appeals from a judgment denying his petition for a writ of mandate to compel the State Personnel Board to set aside its decision sustaining his dismissal from the position of social worker for the Orange County Department of Social Welfare.

On July 6, 1973, petitioner was informed in writing that he was suspended from his position effective at the close of business on that day and dismissed effective July 23, 1973. Pursuant to petitioner's request, an administrative hearing was conducted before a hearing officer of the State Personnel Board. The following facts were adduced at the hearing:

Mrs. Dawson, an eligibility worker for the county, first became acquainted with petitioner in March 1969. About March 18, 1969, petitioner told her during a coffee break that he "wished her husband was dead so they could get together." Robert Knight, another employee of the Orange County Welfare Department who was present, recalled that petitioner had told Mrs. Dawson "[I]f your husband can't take care of you, why don't you come see me?" In March or April 1969, petitioner said to Mrs. Dawson, "That looks like nice lipstick. May I taste it?" The statement frightened Mrs. Dawson because of petitioner's close proximity to her in a small room. In April or May 1969, Mrs. Dawson heard petitioner tell another employee at work that she had a good looking body. On another occasion in 1969, petitioner seated himself next to Mrs. Fennell, a county social worker, on a

very small bench at a picnic table. Petitioner lowered his head to about table level, "looked up and down" Mrs. Fennell's thigh and said loudly, "Why did you not tell me your husband was out of town? I would have come to visit you. I would have taken care of you." [1]

In March 1973, petitioner visited the home of Mrs. Bruce, a welfare recipient, without giving her prior notice. Upon meeting Mrs. Bruce's 24-year-old daughter, petitioner mentioned the possibility that the daughter could act as a baby sitter while her mother worked. (Mrs. Bruce had been seeking a baby sitter so that she could accept employment outside her home.) Petitioner then said to the daughter, "You don't have to go to work at all. You can be my handmaid." Both Mrs. Bruce and her daughter were offended and loudly ordered petitioner to leave the home. After his suspension from employment, petitioner returned to Mrs. Bruce's home and told her, "You had my ass fired."

Subsequently, petitioner issued instructions that the aid being provided to Mrs. Bruce be discontinued on the basis that she had failed to cooperate. Mrs. Bruce called petitioner's supervisor, Lee Miller, to inform him that petitioner had been at her home harassing her; that petitioner told her that he was supporting her as a taxpayer; and that petitioner stated he was planning to discontinue her welfare. Upon reviewing the case file, Mr. Miller determined that there was no reason to discontinue aid to Mrs. Bruce. He wrote a memo to petitioner directing him to rescind the discontinuance immediately. Despite receiving the memorandum, petitioner again indicated in the case file that he would not rescind the discontinuance "my supervisor notwithstanding." As petitioner's supervisor, Mr. Miller considered petitioner's refusal an act of insubordination.

Mr. Miller further testified that petitioner had far more difficulty complying with applicable welfare rules than any other worker under his supervision. Mr. Miller consequently

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[1] The board found that "[t]he occurrences in 1969 are too remote in time to form an independent basis for the imposition of discipline in 1973." Therefore, evidence of those occurrences was admitted only to corroborate the allegations of similar conduct of more recent vintage.

found it necessary to spend a disproportionate amount of time supervising petitioner.

During May 1973, petitioner was assigned to a client in need of employment. The client had a small boy and an elderly father for whom she was caring. When he learned that another social worker was seeking a live-in attendant for a client who was severely disabled, petitioner telephoned the disabled lady (Mrs. Davis) and informed her that he had a qualified applicant for the position of live-in attendant but that the applicant had a small boy and a father who also needed to be accommodated in the home. Mrs. Davis declined, saying her home was not adequate to accommodate the father although she could accommodate the mother and child.

Several days later, petitioner again telephoned Mrs. Davis and told her that he had a qualified applicant who had a child. Although he was proposing the same individual as before, petitioner made no mention of her father. An interview was arranged and petitioner came to Mrs. Davis' home that same day with the prospective attendant, her child and her father. Petitioner told Mrs. Davis that he "had this yoke around his neck for quite a few days, and he intended to get rid of it by 5:30." When Mrs. Davis indicated that she did not see how the attendant's family could be included in her food budget, petitioner said the budget "would just have to cover it" if the attendant's father's application for food stamps was denied. Petitioner said he had "gone over the heads of everyone" to make this arrangement that Mrs. Davis should "not make any waves"; and that calling her social worker would be futile. Petitioner stated that his supervisor and the welfare administrators were a "bunch of flunkies." He used vulgar language to describe a social worker. Petitioner's conduct was overbearing and conveyed the feeling to Mrs. Davis that she had no choice in the matter. After insistence by Mrs. Davis and her mother, petitioner relented in his demand that the attendant's father be housed in the home but still said the father must be allowed to take his meals in the home.

The attendant and her son moved into Mrs. Davis' home the next day but immediately experienced difficulty and

moved out within 15 minutes. Petitioner, at a time when he was no longer employed by the county, returned to Mrs. Davis' home, asserting that he was gathering "evidence against" the live-in attendant.

On May 18, 1973, Mrs. Hufford, Director of Family and Adult Services for the county, interviewed Frances Thompson, the woman petitioner had attempted to place in Mrs. Davis' home. Mrs. Thompson stated that she was a trained nurse's aid, did not want a live-in position, and had not asked petitioner to find that type of employment. Nevertheless, petitioner told her that she must first accept a job as a live-in attendant; that she could not refuse; and that she had been a yoke around his neck.

On January 3, 1973, petitioner loudly berated an office worker for an error in the presence of coworkers. He shouted at the employee in a derogatory manner for 5 to 10 minutes. This attracted the attention of everyone in the office.

On November 8, 1973, the hearing officer issued a proposed decision recommending that the suspension and dismissal of petitioner be upheld. On November 15, 1973, the State Personnel Board issued its decision adopting the hearing officer's proposed decision.

Thereafter, petitioner brought the instant administrative mandamus proceeding to review and set aside the decision of the State Personnel Board and to recover damages for loss of income as a result of his suspension and dismissal. The cause was submitted on the pleadings, the administrative record, and the written and oral arguments of counsel. Thereafter the judge rendered a notice of intended decision on which he held that a "fundamental vested right" was involved and that, therefore, the applicable standard of judicial review was the independent judgment rather than the substantial evidence test. He determined that the findings of the State Personnel Board were supported by the weight of the evidence, that no prejudicial errors were committed in the administrative hearing, that the penalty imposed did not constitute an abuse of discretion, and that the petition should be denied. Judgment was entered accordingly.

On appeal petitioner contends: (1) The trial court erroneously applied the "substantial evidence" test instead

of the "independent judgment" test; (2) the county failed to supply him with an adequate statement of the facts constituting the cause for its punitive action; (3) the evidence is not sufficient to support the findings; and (4) the lack of a hearing prior to the imposition of discipline denied his right to procedural due process.

I

Petitioner's contention that the trial court erroneously applied the substantial evidence test in reviewing the board's factual determinations is without merit.

In the first place, the proper standard to be applied by a court in reviewing decisions of the State Personnel Board is the "substantial evidence" test; this is so because the board derives its adjudicatory power directly from the state Constitution (art. XXIV, § 3a). (Boren v. State Personnel Board, 37 Cal. 2d 634, 637-638; Blake v. State Personnel Board, 25 Cal. App. 3d 541, 551.) When an agency has been granted limited judicial power by the Constitution, judicial review of the agency's factual findings is limited to a determination whether those findings are supported by substantial evidence in light of the whole record. (Strumsky v. San Diego Employees Retirement Assn., 11 Cal. 3d 28, 35-36; Shepherd v. State Personnel Board, 48 Cal. 2d 41, 46. See Skelly v. State Personnel Board, 15 Cal. 3d 194, 217, fn. 31.) In such cases, the substantial evidence test is applicable regardless of whether the decision of the agency affects a fundamental vested right. (Strumsky v. San Diego County Employees Retirement Assn., supra, 11 Cal. 3d at p. 35.)

In any event, the trial court, contrary to petitioner's contention, did apply the "independent judgment" test and found the board's findings to be "substantiated by the weight of the evidence."

II

Petitioner contends that the county failed to provide him an adequate statement of the facts constituting the cause for his suspension and dismissal.[2]

Proceedings before administrative agencies are not governed by the technical rules of pleadings characteristic of actions in courts of law. (Gipner v. State Civil Service Commission, 13 Cal. App. 2d 100, 106-107; Dyment v. Board of Medical

[2] The portions of the "Statement of Causes for Suspension and Dismissal of Martin Darvin" found by the board to constitute sufficient cause for discipline are as follows:

"Martin Darvin . . . was suspended . . . for the following causes:

"1. Insubordination.

"a. Darvin was ordered by his supervisor on or about April 3, 1973, not to discontinue aid in one of his cases. Darvin refused to obey this order and discontinued aid.

"2. Unprofessional and inappropriate case work.

"a. . . . Darvin moved [a female client] . . . into a home with an ATD client without the ATD client being duly consulted.

" . . . . . .

"4. Making derogatory remarks about the other service workers in the Department and other public agency employees.

"a. This conduct has continued for a period of several years, in spite of counseling and written warnings.

" . . . . . .

"9. Unprofessional behavior in dealing with an eligibility worker.

"a. Wrongfully chastising the worker on January 3, 1973, in a loud and angry voice, resulting in an office scene and undue embarrassment to the worker."

Upon petitioner's request for clarification, the county sent him a letter which included the following. (The letter noted the confidentiality requirements of Welfare and Institutions Code section 10850, which generally prohibits disclosure of the name of welfare recipients and applicants.)

"1. The individual whose aid was discontinued has the initials of D.B.

"2. The initials of the female client [who was moved into the home of the ATD client] are F.T. . . . and the initials of the ATD recipient are T.D.

" . . . . . .

"6. [The making of derogatory remarks about service workers and other public agency employees] has been a continuing pattern of behavior, and several witnesses may be called to support this

Examiners, 57 Cal. App. 260.) Accusations in the instant type of proceeding must simply be "sufficiently specific in regard to circumstances and date to allow the accused to identify the transaction and understand the nature of the alleged offense to enable him to present his defense thereto..." (Gipner v. State Civil Service Commission, supra, 13 Cal. App. 2d at p. 107.)

The statement of causes given petitioner, in conjunction with the letters of clarification provided by the county, adequately complied with the foregoing standards. (Cf. Gipner v. State Civil Service Commission, supra, 13 Cal. App. 2d at pp.107-108; Smulson v. Board of Dental Examiners, 47 Cal. App. 2d 584, 588-589; Anderson v. Board of Medical Examiners, 117 Cal. App. 113, 114-117; Whetstone v. Board of Dental Examiners, 87 Cal. App. 156, 158-160.) While only the initials of the welfare recipients involved in the transactions were divulged, those individuals had been petitioner's own clients within the several months preceding the disciplinary action. The statements of the specific behavior engaged in by petitioner (see fn. 2, supra), together with the disclosure of the initials of welfare recipients involved, was reasonably adequate to notify petitioner of the transactions in question.

(Fn. 2 cont.)

charge, including but not necessarily limited to, Dorothy Hufford, Judith Herre, Cathy Hamilton, and Diane Omsted."

Subsequently, prior to the administrative hearing, a "Supplemental Statement of Causes" added the following:

"4. (b) Making lewd or suggestive actions or remarks to female clients or members of the public while on duty."

An accompanying letter stated:

"Our charge 4 (b). . . involve[s]. . . the daughter of D.B. referred to in our answer number 1 to your letter. [¶] You will understand that we are continuing to interview witnesses, and we reserve the right to produce any relevant evidence at the hearing. Because of time constraints we do not expect to again communicate to you by mail prior to the hearing."

Petitioner also apparently complains that he was not allowed to contact witnesses to the transactions upon which his dismissal was based. However, the record of the administrative proceeding does not substantiate the claim. Petitioner also contends that the administrative proceeding failed to comply with several provisions of the Administrative Procedure Act (Gov. Code, §§ 11500-11529). However, that act has not been made applicable to the State Personnel Board. (Gov. Code, § 11501; Leeds v. Gray, 109 Cal. App. 2d 874, 883.)

III

Petitioner contends that the weight of the evidence does not support the board's findings sustaining the accusations made by the county. The contention is nonmeritorious. An appellate court may not redetermine the weight of the evidence. "It is an elementary, but often overlooked principle of law, that when a verdict is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence, contradicted or uncontradicted, which will support the conclusion reached by the jury. When two or more inferences can be reasonably deduced from the facts, the reviewing court is without power to substitute its deductions for those of the trial court." (Crawford v. Southern Pac. Co., 3 Cal. 2d 427, 429. See 6 Witkin, Cal. Procedure, § 245, pp. 4236-4237.) The rule is the same on appellate review of the decision of a trial court in administrative mandamus. (Brush v. City of Los Angeles, 45 Cal. App. 3d 120, 123; Rigsby v. Civil Service Com., 39 Cal. App. 3d 696, 701.)

The instant record discloses ample evidence to support the board's findings.

Nor did the board abuse its discretion in sustaining the imposition of the penalty of dismissal in the instant context. Neither a trial court nor an appellate court is free to interfere with the imposition of a penalty by an administrative tribunal even though, in the court's own evaluation of the circumstances, the penalty appears to be too harsh. (Lake v. Civil Service Commission, 47 Cal. App. 3d 224, 228;

Cadilla v. Board of Medical Examiners, 26 Cal. App. 3d 961, 966-967.) Such interference is proper only when there is an arbitrary, capricious or patently abusive exercise of discretion by the administrative agency. (Skelly v. State Personnel Board, supra, 15 Cal. 3d at p. 217; Lake v. Civil Service Commission, supra, 47 Cal. App. 3d at p. 228; Blake v. State Personnel Board, supra, 25 Cal. App. 3d 541, 553.) In view of the number and nature of petitioner's improper actions, the board's decision sustaining his dismissal was not an abuse of discretion.

IV

Petitioner contends that the imposition of discipline without affording him any procedural safeguards constituted a denial of procedural due process. He is right.

In Skelly v. State Personnel Board, supra, 15 Cal. 3d 194, our high court held that the provision of the state Civil Service Act which permitted punitive action to take effect without according the employee any prior procedural rights was unconstitutional. The court held that due process mandates certain procedural rights before discipline becomes effective and that "[a]s a minimum, these preremoval safeguards must include notice of the proposed action, the reasons therefore, a copy of the charges and materials upon which the action is based, and the right to respond, either orally or in writing, to the authority initially imposing discipline." (15 Cal. 3d at p. 215.) In the case at bench, petitioner was not offered those procedural safeguards before his suspension and dismissal. If Skelly is retroactively applicable, the action taken on July 6, 1973 would be invalid.

The board argues that Skelly was intended to be prospective only and, therefore, has no application to administrative action taken prior to October 16, 1975 (the date Skelly became final).[3] That issue has now been laid to rest by the Supreme Court in Willie Barber v. State Personnel Board, S.F. 23457 (filed Nov. 30, 1976). Our high court held that

3/ The board also maintains that petitioner may not raise the due process issue on appeal because he failed to present it in either the

the "decision in Skelly is . . . applicable to all pending cases where the dismissals are not yet final." (Slip Opinion, p. 10.) Skelly is, therefore, applicable to the instant case and the punitive action taken against petitioner on July 6, 1973 must be declared invalid.

Inasmuch as petitioner was accorded a full evidentiary hearing by November 7, 1973 on the basis of which his dismissal was upheld, the constitutional safeguards to which he is entitled have been fulfilled and no new administrative proceedings are required. (Willie Barber v. State Personnel Board, supra, Slip Opinion, pp. 8-9.) However, petitioner is entitled to damages in the form of back pay for the period discipline was improperly imposed. "The proper period for measuring the amount of back pay due . . . begins at the time discipline is actually imposed and ends on the date the board files its decision." (Willie Barber v. State Personnel Board, supra, Slip Opinion, p. 12.) In the case at bench, discipline was imposed on July 6, 1973, effective as of the close of business that day, and the board's decision was filed on November 15, 1973.

The judgment is reversed insofar as it denied petitioner damages from the time of his suspension to the date the board's decision was filed. In all other respects, the judgment is affirmed. The parties shall bear their respective costs on appeal. [4]

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(Fn. 3 cont.)
dministrative hearing or in the trial court. However, a party may present a new issue on appeal when it involves only a question of law determinable from undisputed facts and it appears that no different factual showing could be made. (See Panopulos v. Maderis, 47 Cal. 2d 337, 341; City of Newport Beach v. Sasse, 9 Cal. App. 3d 803, 812.)

4/ Petitioner argues at some length that the doctrine of sovereign immunity does not preclude respondent's liability in tort for violations of his constitutional and statutory rights. The contention has no relevance to the issues before us since petitioner's pleadings stated no cause of action in tort against respondent.

APPENDIX C

APPLICABLE PROVISIONS OF THE SOCIAL SECURITY ACT (TALMADGE AMENDMENT) 42 U.S.C.

SUBCHAPTER IV. – Grants to States for Aid and Services to Needy Families with Children and for Child Welfare Services

Part A. – Aid to Families with Dependent Children

§ 602. (a) A State plan for aid and services to needy families with children must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the adminstration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to families with dependent children is denied or is not acted upon with reasonable promptness; *****

(19) (A) provide that every individual, as a condition of eligibility for aid under this part, shall register for manpower services, training, and employment as provided by regulations of the Secretary of Labor, unless such individual is [exempt for stated good causes]; *****

(G) provide that the State agency will have in effect a special program which (I) will be administered by a separate administrative unit and the employees of which will, to the maximum extent feasible, perform services only in connection with the administration of such program, (II) will provide (through arrangements with others or otherwise) for individuals who have been registered pursuant to subparagraph (a) *****such health, vocational rehabilitation, counseling, child care, and other social and supportive services as are necessary to enable such individuals to accept employment or receive manpower training under part C [work incentive program], (III) will participate in the development of operational and employability plans *****; and (IV) provides for purposes of clause (II), that when more than one kind of child care is available, the mother may choose the type, but she may not refuse to accept child care services if they are available. *****

§ 604. (a) In the case of any State plan for aid and services to needy families with children which has been approved by the Secretary, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds – *****

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 602 (a) of this title to be included in the plan; the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to the State (or shall limit payments to categories under or parts of the State plan not affected by such failure). *****

APPENDIX D

DARLENE BRUCE CASE RECORD (Pl. Ex. 9A)

(1) On November 22, 1973, upon receiving case of Darlene Bruce for employment services, Petitioner made his initial home call to counsel client regarding her rights and responsibilities as an aid recipient as set forth in the Talmadge Amendment. Not at home. Message left.

(2) Later on same date, client telephoned Petitioner at his office in response to message, and an appointment by client was made for an office call.

(3) On November 29, 1972, client appeared for an office call, at which time aforesaid rights and responsibilities were spelled out. She claimed to be recovering from "walking pneumonia" and was scheduled for medical tests in December. She promised to notify Petitioner of the results of her tests to enable him to counsel her appropriately on job efforts.

(4) On December 20, 1972, client telephoned that she would make an office call on the 26th for a job bank referral.

(5) On December 22, 1972, Petitioner made a home call to deliver Christmas gifts of toys for client's three young children (donated to department by an anonymous benefactor).

(6) On December 26, 1972, client made an office call and accepted a job bank referral for a nurse's aide job at Basler Convalescent Hospital in Fullerton. She returned later to report that Basler offered her only $1.65 per hour, instead of $1.90-$2.00 as employer had indicated. Petitioner did not bind client to accept a job which had been misrepresented as to pay. Client accepted another job bank referral to Aamco Maintenance for a cleaning woman.

(7) On January 3, 1973, Petitioner made a home call to determine upshot of previous job bank referral of December 26, inasmuch as he had received no report from client. Not

at home. Message left.

(8) On January 8, 1973, client telephoned to report that she had been hired by Aamco but decided against taking job because of auto and sitter problems. She said Aamco is holding job for her. Petitioner accepted her statement as good cause for not requiring her to go to work immediately. She indicated she desires a live-in sitter.

(9) On January 19, 1973, Petitioner made a home call to learn of client's situation and need for services. Not at home. Message left.

(10) On January 23, 1973, client attempted to reach Petitioner by telephone. He was absent.

(11) On February 6, 1973, Petitioner telephoned client's eligibility worker, who said she had spoken with client earlier in the day. Client had reported in this conversation that she still had not got a job and needed a sitter. Petitioner sent client two job effort lists for remittance on the 15th and 30th of the month as proof of job search efforts.

(12) On March 1, 1973, Petitioner was able to reach client by telephone for the first time. She reported that she had not been able to find a live-in or other sitter; therefore, she was unable to look for work. She said she had applied to the day-care referral office of the department but had been advised that no sitters were available in the area in which she was seeking a day-care home. Petitioner advised her he would check out the day-care office himself and would call her back. She demurred, however, as she was leaving immediately on an errand. It was agreed then that she would call back upon her return home. However, she failed to call back, although a day-care referral was obtained in the indicated area.

(13) On March 7, 1973, Petitioner reached client by telephone. She explained that she had been unable (for unstated reasons) to call back on the first, as agreed, but said she had

worked out a day-care plan with her married daughter, now in Sacramento, whom she is bringing to Santa Ana in the following week. She assured Petitioner she would call him then.

(14) On March 23, 1973, Petitioner made a home call and asked client why she had failed to call or come to his office for a job bank referral. Client said that married daughter, whom she presumably "brought" from Sacramento to care for children, had found a job for herself, inasmuch as her husband could not find work, thus leaving client still without child care. Once again Petitioner explained Talmadge mandatory work requirement, and again he asked her why she had not called back on the 1st for the available day-care referral. She was vehement in protesting mandatory work requirement, insisted that her part-time job as a school crossing guard should suffice, also insisted that she was unable to find a sitter. Petitioner advised her he would contact her soon to help her work out child care.

(15) On March 26, 1973, client made an office call to her eligibility worker for an emergency referral for supplementary food, milk, and gasoline funds. Eligibility worker referred her to Petitioner, who asked her why she had neglected to mention these problems at the time of the previous home call on the 23rd. She responded that she thought Petitioner handled only employment services. She tried to explain that she ran short because of her daughter's family, insisted that her daughter's AFDC grant in Sacramento was too meager, which was why she had to bring daughter's family, including husband and two small children, to her home because they were "starving" there.

Petitioner explained that client's grant was intended for herself and her own children, not her daughter's family. He pointed out that her grant plus her part-time job earnings should enable her to manage. She was steadfast in her refusal of full-time employment and demanded a new service worker.

Immediately upon client's departure, Petitioner conferred

with her eligibility worker, who informed him that the married daughter had admitted she could pay her mother (that is, reimburse her for living expenses in client's home from her own AFDC grant).

Both eligibility worker and Petitioner concurred in a determination of "Lack of Cooperation With Mandatory Work Requirement," and Petitioner submitted an office memorandum officiallizing the service determination to eligibility worker as follows:

"PLEASE HOLD APRIL MID-MONTH CHECK AND DISCONTINUE EFF. 4-30-73. LACK OF COOPERATION WITH MANDATORY WORK REQUIREMENT. WOMAN ADAMANTLY REFUSES TO CONSIDER GIVING UP PRESENT PART-TIME JOB FOR FULL-TIME JOB. ALTHOUGH SHE USES EXCUSE OF INABILITY TO FIND CHILD CARE, SHE REFUSES MY SERVICES. ALSO, SHE ADMITS MISUSE OF AFDC FUNDS IN PROVIDING SUPPORT TO DAUGHTER'S FAMILY."

(16) On April 2, 1973, Petitioner's supervisor received a telephone call from client and made the following entry in the case record:

"Telephone call from client requesting clarification of action taken by her service worker. Mrs. Bruce complained about being "told in a demanding manner" that she would have to quit her part-time job of crossing guard. She complained that the service worker made a statement to her that he (service worker) was helping to support her family. Mrs. Bruce requested a change of service workers. Mrs. Bruce reported that she would give up her part-time job for a full-time job that paid more money than present job if child care could be located so that her children could walk to school from the sitter's home. Mrs. Bruce has placed applications for several trainee positions in light industry. Mrs. Bruce is attempting to obtain a telephone to improve chances of being hired. I advised Mrs. Bruce that I would review case and discuss problem with her tomorrow."

(17) On April 3, 1973, Petitioner's supervisor made the following entry in the case record:

"I reviewed case and find that we do not have adequate grounds to discontinue aid for not co-operating with the employment requirement. The "hold" will be rescinded. I talked to the eligibility worker who said that Mrs. Bruce would be calling her today. Advised that there would not be a change of service worker and invited Mrs. Bruce to call me again.

(s) Lee Miller"

(18) On April 5, 1973, Petitioner conferred with client's eligibility worker. Eligibility worker checked client's eligibility case to determine if Employment Registration Form 5-95 had been returned from HRD (Dept. of Human Resources Development). Not returned. Eligibility worker to send client new Form 5-95 with advice to apply for exemption on basis of lack of child care. Then Petitioner telephoned Santa Ana Unified School District for name and location of school attended by Bruce children, informed it was Hoover School, located at Santa Clara and French Avenues (about one mile from Bruce home, not out East Chapman and Tustin Avenues, as claimed by Mrs. Bruce at home call on March 23). Then he telephoned Hoover School to inquire if Bruce children take school bus which has pickup stop two blocks from Bruce residence. Hoover clerk to call Petitioner back when she asks Bruce children how they get to school.

Called eligibility worker back, advised her to delete advice re: exemption at HRD as day care home would not be indicated. Explained to eligibility worker that as transportation is no problem, sitter at Bruce home would be adequate. Petitioner explained to eligibility worker further that Mrs. Bruce indicated to him at March 23 home call that she won't have a "Spanish" sitter, neighborhood being preponderantly Mexican-American.

Not having heard back from Hoover clerk after few hours, Petitioner called school back, was advised that Mr. Lopes, in charge of school transportation, would call him back. Also telephoned Santa Ana City Finance Department for eligibility worker re: Mrs. Bruce's crossing guard job, was informed she had this job since October, 1971. Suggested to eligibility worker that she send for earnings report to verify income.

(19) On April 6, 1973, Petitioner telephoned Santa Ana Unified School District for Mr. Lopes (had not called back on the fifth). Informed by clerk: Bruce children do take school bus to and from school. Petitioner conferred with eligibility worker to assure her that he would not rescind memo of March 26, 1973 requesting hold on mid-month check and discontinuance effective April 30, 1973, as facts of lack of cooperation and failure to comply with Talmadge are glaring, my supervisor notwithstanding (see entry 4-3-73).

Following the latest case record entry of April 6, 1973, Petitioner added the following:

COMMENT: Numerous distortions of fact were recited by Mrs. Bruce as recorded by supervisor. Woman said she has numerous applications for jobs, yet refuses job bank referrals for lack of child care. Petitioner had been going very lightly with her because he fell for her sob story. Only when client came to Broadway Building (office of eligibility worker) on March 26, 1973, seeking additional assistance did I discover her true credibility problem. (See entry of 3-23-73) She told supervisor she was trying to get a telephone to improve her employment prospects when actually she had a telephone all the time until only a short time ago. At the home call of March 23, 1973, she explained she could not keep up the telephone. If she came to Petitioner's office for job bank referrals, she would not need her own telephone, as Petitioner would do her calling for her.

(20) On February 6, 1973, Petitioner sent client job effort lists, which she has not returned (listing all the places where

she claimed she had applied for work). Petitioner did not send her job effort lists for March as he believed her child care story.

Mrs. Bruce's eligibility case file contains numerous letters by her to various government agencies, including the governor and the Department Director, complaining of insufficient assistance, et cetera. Prior to last Christmas she telephoned to ask Petitioner, "What are you doing for Christmas?" When he explained he was going to spend Christmas with his family, she responded, "I didn't know you were married... You don't look married."

(21) On April 10, 1973, Petitioner conferred with client's eligibility worker, who reported sending new Form 5-95 to woman and earnings clearance Form 308 to Santa Ana City Finance Department. On the same date, client made an office call to see Petitioner's supervisor, who had not yet arrived at his office. Receptionist notified Petitioner that she had asked client if she would like to see her service worker instead, but client refused.